

FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF CALIFORNIA
321 EAST 2nd STREET
LOS ANGELES, CALIFORNIA 90012-4202
213-894-2854
213-894-0081 FAX

CUAUHTEMOC ORTEGA
Federal Public Defender
AMY M. KARLIN
Chief Deputy

ANGELA VIRAMONTES
Riverside Branch Chief
KELLEY MUNOZ
Santa Ana Branch Chief
K. ELIZABETH DAHLSTROM
Chief, Capital Habeas Unit

Direct Dial: (213) 894-5308

June 25, 2024

Molly C. Dwyer, Clerk of the Court
United States Court of Appeals for the Ninth Circuit

Re: Response to Government's Fed. R. App. P. 28(j) Letter on *United States v. Rahimi*, --- U.S. ----, 2024 WL 3074728 (June 21, 2024) (Dkt. 75); *United States v. Duarte*, CA No. 22-50048 (opinion filed May 9, 2024, and published at 101 F.4th 657 (9th Cir. 2024)).

Dear Ms. Dwyer:

Rahimi wholly undermines the government's principal argument here.

The government has contended that *Heller* and *Bruen*'s references to "law-abiding, responsible citizens" mean the Second Amendment excludes everyone with a modern felony conviction.¹ Judge Milan Smith's panel dissent echoed that reasoning,² and cases cited in the government's en banc petition all adopted some version of it.³

¹ GAB 13, 20-21, 31, 50; Rehearing Pet. 7, 9; *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *NYPSRA v. Bruen*, 597 U.S. 1, 38 & n.9 (2022).

² *Duarte*, 101 F.4th at 693 & n.2 (dissent).

³ *United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024); *United States v. Jackson*, 69 F.4th 495, 503-04 (8th Cir. 2023); *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023); *United States v. Dubois*, 94 F.4th 1284, 1291-93 (11th Cir. 2024).

In *Rahimi*, however, the Supreme Court unanimously rejected the contention that that phrasing delineates the Second Amendment’s coverage.⁴ It explained that the issue of who could be disarmed “was simply not presented” in *Heller* and *Bruen*. *Rahimi*, 2024 WL 3074728, at *11; *see also id.* at *45 (Thomas, J., dissenting) (“Not a single Member of the Court adopts the Government’s theory.”). The *Duarte* majority therefore correctly rejected the argument that *Heller* and *Bruen* created a “non-law-abiding” Second Amendment carveout.⁵

Nor does *Rahimi* otherwise help the government. It is explicitly narrow, holding “only” that “an individual found by a court to pose a credible threat to physical safety of another may be *temporarily* disarmed.” 2024 WL 3074728 at *11 (emphasis added). Nothing in it supports the government’s claim that it may *permanently* and *automatically* disarm *anyone* ever convicted of *any* felony.

To the contrary, *Rahimi* explained that even laws “regulat[ing] arms-bearing for a permissible reason” may be unconstitutional “if [they do] so to an extent beyond what was done at the founding.” *Id.* at *6. It therefore supports the panel’s holding that permanent disarmament requires a conviction analogous to Founding-era crimes carrying permanent punishments like execution.⁶

Respectfully submitted,

/s/ Sonam Henderson
SONAM HENDERSON
Deputy Federal Public Defender

⁴ *E.g.*, Argument Transcript 4-9, *United States v. Rahimi*, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-915_986b.pdf.

⁵ *Duarte*, 101 F.4th at 670.

⁶ *Duarte*, 101 F.4th at 689-90.

Certificate of Compliance re Length

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, I hereby certify that the body of the foregoing letter (including footnotes, but not including the letterhead, preliminary information, the greeting, or the signature block) contains 349 words.

/s/ Sonam Henderson

SONAM HENDERSON

Deputy Federal Public Defender